

Before the
Administrative Hearing Commission
State of Missouri



BRENDA HAWLEY (CUBIT),

Petitioner,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 13-0991 RI

DECISION

We dismiss the complaint filed by Brenda Hawley¹ because we lack jurisdiction to hear it at this time.

Procedure

On June 7, 2013, Hawley filed a complaint appealing an income tax notice of deficiency issued by the Director of Revenue (“the Director”). On July 8, 2013, the Director filed a motion to dismiss supported by an affidavit and copies of the Director’s records. We treat the motion as a motion for summary decision because it relies on matters other than allegations in the complaint and stipulations. Regulation 1 CSR 15-3.436(4)(A).² We will grant the motion if the

¹ Hawley is now known as Brenda Cubit. Because the assessment was issued against Brenda Hawley, we use that name in this decision.

² All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Director establishes facts that entitle him to a favorable decision and Hawley does not dispute those facts. Regulation 1 CSR 15-446(6)(A).

We allowed Hawley until July 22, 2013 to respond to the motion, but she did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. On May 15, 2013, the Director mailed Hawley a Notice of Deficiency – Individual Income (Form 2944) (“the notice”) concerning the 2009 tax year. The notice states:³

YOU HAVE THE RIGHT TO PROTEST THIS ASSESSMENT. If you disagree with the assessment of the amounts shown above, you may file a protest. **If you wish to file a protest, you must do so within 60 days of the date of this notice.** An explanation of your options for resolving this notice is enclosed.

The Director’s mailing address is provided on this page of the notice.

2. On June 7, 2013, Hawley filed her complaint with this Commission, and we provided the Director with a copy of the complaint that same day.

3. Hawley has not filed a protest with the Director, and the Director has not yet issued a final decision on the issue of her 2009 income tax liability.

Conclusions of Law

Section 621.050.1⁴ gives us jurisdiction over an appeal of “any finding, order, decision, assessment or additional assessment made by the director of revenue.” Before our jurisdiction arises, however, a protest must be filed with the Director and the Director must issue a final decision on that protest. Sections 143.631.1 and 143.651; *State ex. rel. Fischer v. Brooks*, 150 S.W.3d 284, 284 (Mo. banc 2004) (describing the filing of a protest as the “exclusive remedy for

³Motion Ex. A.

⁴Statutory references, unless otherwise noted, are to RSMo 2000.

challenging the assessment.”); *State ex rel. Fischer v. Sanders*, 80 S.W.3d 1 (Mo. App., W.D. 2002) (setting forth the protest as a necessary step in appealing a case to this Commission and then to a court).

Hawley did not first file her protest with the Director, and the Director has not yet issued a final decision on the protest after we provided him with a copy of it. Therefore, we have no jurisdiction over Hawley’s complaint at this time because the protest procedure has not yet concluded. If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

In past cases the Director has stated he will consider the date the complaint was filed with this Commission as the date the protest was filed with him.⁵ If he does, Hawley’s appeal would fall within the period for timely filing a protest under § 143.631. If the Director subsequently issues a final decision as a result of the protest that is unfavorable to Hawley, she may appeal the final decision to this Commission at that time.

Summary

We grant the Director’s motion to dismiss the complaint because we lack jurisdiction to hear it at this time.

SO ORDERED on July 26, 2013.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner

⁵See, e.g., *Headrick v. Director of Revenue*, Case No. 11-1339 RI (Jan. 10, 2012); *Youtzy and Koepke v. Director of Revenue*, Case No. 11-1692 RI (Sept. 27, 2011); *Keele v. Director of Revenue*, Case No. 11-1665 RI (Sept. 27, 2011); *Tompson v. Director of Revenue*, Case No. 11-1603 RI (Sept. 27, 2011); *Gray v. Director of Revenue*, Case No. 11-1578 RI (Sept. 27, 2011); *O’Day v. Director of Revenue*, Case No. 11-1600 RI (Sept. 27, 2011); *Higgerson v. Director of Revenue*, Case No. 11-158 RI (Sept. 20, 2011); *Otto de la Noval v. Director of Revenue*, Case No. 11-1101 (September 12, 2011); *Tooley v. Director of Revenue*, 11-1414 RI (Sept. 1, 2011); *Pate v. Director of Revenue*, Case No. 11-1322 RI (Sept. 1, 2011); *Briggs v. Director of Revenue*, Case No. 11-1163 RI (July 27, 2011).